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5 UNITED STATES DISTRICT COURT
6 EASTERN DISTRICT OF WASHINGTON

7 UNITED STATES OF AMERICA,

8 Plaintiff,

9 v.

10 AARYANA LEIGH MALCOLM,

11 Defendant.

NO. 2:13-CR-0124-TOR-1

ORDER DENYING DEFENDANT'S
MOTION TO REDUCE SENTENCE

12 BEFORE THE COURT is Defendant's Motion for Compassionate Release.
13 ECF No. 323. The Government filed its response. ECF No. 329. Defendant filed
14 her reply. ECF No. 330. This matter was submitted for consideration without oral
15 argument. The Court has reviewed the record and files herein, the completed
16 briefing, and is fully informed. For the reasons discussed below, Defendant's
17 motion is denied.

18 **BACKGROUND**

19 On October 14, 2014, Defendant Aaryana Leigh Malcolm appeared before
20 the Court and entered a plea of guilty to Count 2 of the Superseding Indictment

1 filed on January 7, 2014, charging her with Possession with the Intent to Distribute
2 50 Grams or More of Actual Methamphetamine, in violation of 21 U.S.C.
3 § 841(a)(1). ECF Nos. 187, 188. On January 21, 2016, this Court sentenced
4 Defendant to a 180-month term of imprisonment, followed by a 10-year term of
5 supervised release, and a \$100.00 special penalty assessment. ECF No. 305.
6 Defendant was remanded to the custody of the United States Marshal to begin
7 service of her sentence. *Id.* at 2. According to the Bureau of Prisons, Defendant is
8 currently scheduled for release on May 14, 2026.

9 On October 1, 2020, Defendant submitted a request for sentence reduction to
10 the warden of the facility where she is incarcerated, FCI Waseca. ECF No. 323 at
11 15; 325 at 124-25. On October 23, 2020, her request was denied. ECF No. 325 at
12 126.

13 On February 10, 2020, Defendant filed the instant Motion for
14 Compassionate Release. ECF No. 323. Defendant requests the Court to reduce
15 her sentence to time-served (a greater than 5-year reduction). *Id.* at 1. She
16 explains that extraordinary and compelling reasons support such reduction,
17 including: her underlying medical conditions, the severity of her struggle with
18 COVID-19, its lasting impact on her health and the COVID-19 conditions at FCI
19 Waseca. *Id.* at 22. Defendant claims that she is no longer a danger to the
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1 community, she has rehabilitated, and has completed educational and vocational
2 training.

3 The Government agrees that Defendant “has identified medical conditions
4 that place her at heightened risk should she contract COVID-19 again”, but “does
5 not concede or agree with a majority of the arguments presented”. ECF No. 329 at
6 2. Because of Defendant’s unique medical circumstances combined with her
7 significant criminal history which raises concerns for the safety of the community,
8 the Government did not argue for or against compassionate release. *Id.*

9 DISCUSSION

10 A. Eligibility for Compassionate Release

11 Federal courts have the statutory authority to modify an imposed term of
12 imprisonment for two reasons: compassionate release under 18 U.S.C. § 3582(c)(1)
13 or based on a change in the sentencing guidelines under 18 U.S.C. § 3582(c)(2).
14 Until recently, motions for compassionate release could only be brought to the
15 Court by the Director of the Bureau of Prisons. 18 U.S.C. § 3582(c)(1)(A) (2002).
16 However, after the December 2018 passage of the First Step Act, defendants may
17 now bring their own motions for compassionate release after exhausting
18 administrative remedies within the Bureau of Prisons or by waiting 30 days after
19 receipt of their request by the warden of defendant’s facility, whichever is earlier.
20 18 U.S.C. § 3582(c)(1)(A) (2018).

1 A defendant may be eligible for compassionate release: (1) if the Court finds
2 “extraordinary or compelling reasons” to warrant a sentence reduction; or (2) if the
3 defendant is at least 70 years old, has served at least 30 years in prison pursuant to
4 a sentence imposed for the offense for which the defendant is currently imprisoned,
5 and the defendant is determined not to pose a risk of danger to the community. 18
6 U.S.C. § 3582(c)(1)(A). Under either eligibility prong, the Court must also find
7 that a sentence reduction is “consistent with applicable policy statements issued by
8 the [United States] Sentencing Commission.” 18 U.S.C. § 3582(c)(1)(A). The
9 Sentencing Guidelines instruct that the Court should consider the sentencing
10 factors set forth in 18 U.S.C. § 3553 when deciding a motion for compassionate
11 release, and that the Court should not grant a sentence reduction if the defendant
12 poses a risk of danger to the community, as defined in the Bail Reform Act.
13 U.S.S.G. § 1B1.13.

14 The Sentencing Commission’s policy statement on sentence reduction
15 mirrors the language of the compassionate release statute, but it has not yet been
16 updated to reflect the procedural changes implemented by the First Step Act.
17 U.S.S.G. § 1B1.13. “While that particular policy statement has not yet been
18 updated to reflect that defendants (and not just the [Bureau of Prisons (“BOP”)])
19 may move for compassionate release, courts have universally turned to U.S.S.G.
20 § 1B1.13 to provide guidance on the ‘extraordinary and compelling reasons’ that

1 may warrant a sentence reduction.” *United States v. McGraw*, No. 2:02-cr-00018-
2 LJM-CMM, 2019 WL 2059488, at *2 (S.D. Ind. May 9, 2019) (gathering cases).
3 The sentence reduction policy statement outlines four categories of circumstances
4 that may constitute “extraordinary and compelling reasons” for a sentence
5 reduction: (1) the defendant suffers from a medical condition that is terminal or
6 substantially diminishes the defendant’s ability to provide self-care in a
7 correctional environment; (2) the defendant is at least 65 years old, is experiencing
8 a serious deterioration in health due to the aging process, and has served at least 10
9 years or 75% of his or her term of imprisonment; (3) family circumstances
10 involving the death or incapacitation of the caregiver of the defendant’s minor
11 child or the incapacitation of the defendant’s spouse or registered partner; or (4)
12 other reasons, other than or in combination with the other listed circumstances, that
13 are extraordinary and compelling. U.S.S.G. § 1B1.13, cmt. n.1. Here, Defendant
14 suggests and the Court accepts that her motion should be analyzed under the catch-
15 all provision, “other reasons” that are “extraordinary and compelling.”

16 **B. Exhaustion or Lapse of 30 days**

17 Defendant has exhausted her administrative remedies. She submitted a
18 request for compassionate release to the Warden at FCI Waseca on October 1,
19 2020 and it was denied on October 23, 2020. ECF No. 325 at 124-26. The
20 Government concedes that Defendant has exhausted her administrative remedies.

1 ECF No. 329 at 12.

2 **C. Extraordinary and Compelling Reasons**

3 Defendant, now age 51, argues that extraordinary and compelling reasons
4 justify a reduction in sentence. Defendant contends that her medical conditions—
5 cardiomyopathy, obesity, Type 2 diabetes mellitus, asthma, and compromised
6 immune system—place her at an increased risk for severe illness if infected again
7 with COVID-19. ECF No. 323 at 12-13. On September 1, 2020, Defendant tested
8 positive for COVID-19. *Id.* at 6. Defendant was then hospitalized. Defendant
9 claims she was placed in a coma for a period of time and was then released from
10 the hospital after 10 days. *Id.* at 7. Defendant claims that she has not fully
11 recovered from COVID-19, she is now on heart medications, diabetic medications,
12 inhalers, and steroids. *Id.* at 7-8. Defendant claims she is a medically vulnerable
13 individual and if she were to be reinfected with COVID-19, she may die. *Id.* at 13-
14 14. Defendant’s expert, Dr. Carlos Franco-Paredes, testified that “[t]here have
15 been at least six documented cases of COVID-19 reinfection”, ECF No. 325 at 45,
16 out of the millions of cases. Defendant’s other expert, Dr. Cameron Baston, only
17 testified that there is a “risk of reinfection” and that patients “may have worse
18 outcomes” upon the second infection. *Id.* at 85. He did not quantify the risk or
19 outcomes. Defendant’s third expert, Dr. Mark Sullivan, testified that “[t]he
20 pandemic is ongoing, but there is hope a vaccine will be available within the next

1 six months.” *Id.* at 119 (Declaration dated 12/4/2020). None of the experts
2 individually examined Defendant or reviewed her complete medical records.

3 The most recent medical records Plaintiff submitted were dated November
4 23, 2020, which show that Defendant complained about a cough and congestion
5 (mild erythema of the pharynx), but an examination showed that she was medically
6 stable (within normal limits), no fever, no chills, no nausea, no vomiting, she was
7 properly medicating, she was performing exercise (walking 5-miles a day), she was
8 assessed with: Asthma, unspecified, Cardiomyopathy, current, and her COVID-19
9 was “Resolved”. *Id.* at 3-5.

10 Whether Defendant is housed in prison or released, the virus continues to
11 spread throughout the world. Just because Defendant fears another infection in
12 prison does not warrant immediate release into the community, where the virus
13 also continues to spread as well. In this case, there are no extraordinary and
14 compelling reasons, alone or in combination, for a reduction in sentence.

15 **D. Factors under 18 U.S.C. § 3553(a)**

16 Defendant claims that she is a “model prisoner” that has rehabilitated, that
17 she came to prison with only a GED and will leave prison as a Greenhouse
18 specialist, a Housekeeping Apprenticeship, and as a Journeywoman. ECF No. 323
19 at 23-25. These claims can all be categorized as rehabilitation, which is not alone
20 an extraordinary and compelling circumstance for release. *See* 28 U.S.C. § 994(t)

1 (“Rehabilitation of the defendant alone shall not be considered an extraordinary
 2 and compelling reason.”). 18 U.S.C. § 3582(c) and the Sentencing Guidelines
 3 instruct that the Court should consider the sentencing factors set forth in 18 U.S.C.
 4 § 3553(a) when deciding a motion for compassionate release. 18 U.S.C. § 3553(a)
 5 provides:

6 The court shall impose a sentence sufficient, but not greater than necessary, to
 7 comply with the purposes set forth in paragraph (2) of this subsection. The
 8 court, in determining the particular sentence to be imposed, shall consider—

(1) the nature and circumstances of the offense and the history and
 8 characteristics of the defendant;

(2) the need for the sentence imposed—

9 (A) to reflect the seriousness of the offense, to promote respect for
 the law, and to provide just punishment for the offense;

10 (B) to afford adequate deterrence to criminal conduct;

11 (C) to protect the public from further crimes of the defendant; and

12 (D) to provide the defendant with needed educational or vocational
 training, medical care, or other correctional treatment in the most
 effective manner;

(3) the kinds of sentences available;

13 (4) the kinds of sentence and the sentencing range established for—

14 (A) the applicable category of offense committed by the applicable
 category of defendant as set forth in the guidelines—

15 (i) issued by the Sentencing Commission pursuant to section
 994(a)(1) of title 28, United States Code, subject to any
 16 amendments made to such guidelines by act of Congress
 (regardless of whether such amendments have yet to be
 17 incorporated by the Sentencing Commission into amendments
 issued under section 994(p) of title 28); and

18 (ii) that, except as provided in section 3742(g), are in effect on
 the date the defendant is sentenced; or

19 (B) in the case of a violation of probation or supervised release, the
 applicable guidelines or policy statements issued by the Sentencing
 Commission pursuant to section 994(a)(3) of title 28, United States
 Code, taking into account any amendments made to such guidelines or
 20 policy statements by act of Congress (regardless of whether such

- 1 amendments have yet to be incorporated by the Sentencing
Commission into amendments issued under section 994(p) of title 28);
- 2 (5) any pertinent policy statement—
- 3 (A) issued by the Sentencing Commission pursuant to section
994(a)(2) of title 28, United States Code, subject to any amendments
4 made to such policy statement by act of Congress (regardless of
whether such amendments have yet to be incorporated by the
Sentencing Commission into amendments issued under section 994(p)
5 of title 28); and
- 6 (B) that, except as provided in section 3742(g), is in effect on the
date the defendant is sentenced.
- 7 (6) the need to avoid unwarranted sentence disparities among defendants
with similar records who have been found guilty of similar conduct; and
- 8 (7) the need to provide restitution to any victims of the offense.

9 At the time of the original sentencing, the Court fully considered these factors. At
10 sentencing, Defendant's total offense level was 34 and she had a criminal history
11 category of VI. This directed an advisory guideline range of 262 to 327 months of
12 imprisonment. The Court expressly departed from the advisory range to impose a
13 sentence sufficient but not greater than necessary to comply with the purposes and
14 goals of sentencing.

15 Once again, the Court has fully considered these factors in light of the
16 information Defendant recently provided. Of particular note is the nature and
17 circumstances of the offense in this case. This was not a simple, one-time event,
18 Defendant's relevant criminal conduct involved the repeated distribution of a
19 significant quantity of methamphetamine into the community. Besides being the
20 leader and organizer of a drug trafficking conspiracy obtaining methamphetamine

1 directly from Mexican suppliers, Defendant enlisted the help of others to collect
2 drug debts, which resulted in multiple drive-by shootings and a car bombing. *See*
3 ECF No. 300. Defendant possessed numerous firearms and provided them to her
4 co-conspirators to further her drug distribution network. *Id.* Because of
5 Defendant's prior criminal record, Defendant was categorized as a "career
6 offender" under the guidelines with a criminal history category VI. *Id.* The Court
7 is obligated to protect the public from defendant's serious and devastating conduct.
8 The sentence the Court imposed was "sufficient, but not greater than necessary," to
9 comply with the purposes of § 3553(a), including to reflect the seriousness of the
10 offense, to promote respect for the law, to provide just punishment for the offense
11 and to afford adequate deterrence to this criminal conduct. Even with recent
12 developments, the sentence imposed remains sufficient but not greater than
13 necessary to comply with the purposes of sentencing.

14 **E. Danger to any Person and the Community under 18 U.S.C. § 3142(g)**

15 Defendant contends that she committed a non-violent crime and that she
16 poses no danger to the community. The gravity of Defendant's instant offense and
17 her extensive criminal history (beginning in 1992, at the age of 22) tells another
18 story. Despite repeated prior convictions, Defendant continued her criminal
19 conduct, undeterred. Because of her serious prior criminal history, Defendant
20 qualified as a "career offender" under the sentencing guidelines.

1 Defendant's good conduct and successful rehabilitative activities— college
2 classes, workshops and work while in prison—are all commendable, but do not
3 alone warrant early release. 28 U.S.C. § 994(t). Considering the totality of all the
4 facts, compassionate release is unwarranted.

5 **CONCLUSION**

6 The Court declines to exercise its discretion to reduce Defendant's sentence
7 because extraordinary and compelling reasons do not warrant such a reduction.

8 **ACCORDINGLY, IT IS HEREBY ORDERED:**

9 Defendant's Motion for Compassionate Release, ECF No. 323, is **DENIED**.

10 The District Court Executive is directed to enter this Order and furnish
11 copies to the parties.

12 **DATED** March 24, 2021.



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A handwritten signature in blue ink that reads "Thomas O. Rice".

THOMAS O. RICE
United States District Judge